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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,084	05/06/2005	Yoav Paltiel	P-1145-US4	2380

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EXAMINER
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WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/534,084

Applicant(s)

PALTIELI, YOAV

Examiner

Eric F. Winakur

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,8,10,11,14,15,17,20,21,23,25,26,28,30,31,34,36 and 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,10,11,14,15,17,20,21,23,25,26,28,30,31,34,36 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/6/05</u> .                                                              | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 37 is objected to because of the following informalities: the phrase "for of" (line 6) should read "for". Appropriate correction is required.

### ***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1, 2, 4, 8, 10, 11, 14, 15, 17, 20, 21, 23, 25, 26, 28, 30, 31, 34, 36, and 37 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 2, 4, 8, 10, 11, 14, 15, 17, 20, 21, 23, 25, 26, 28, 30, 31, 34, 36, and 37 of prior U.S. Patent No. 6,669,653. This is a double patenting rejection.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant cites several references that teach a variety of measurement systems and methods for monitoring the progress of labor. In particular, Cannon et al. teach a cervical dilation measuring device that measures a current induced in a coil when a current is passed through a second coil. The measured current is correlated with the distance between the two coils. Acker et al. teach an

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obstetrical instrument system and method that determines position information related to maternal and fetal positions that relies upon measurement of non-ionizing fields, such as magnetic fields. Portions of the system are positioned on the mother and fetus, but the method does not include touching a position sensor to a fetal presenting part and a set of points on the mother or an apparatus for performing such a method, as set forth in the claims. Kemper et al. teach an ultrasound-based measurement system for determining cervical effacement and dilation. Ishikawa et al. teach a position measurement system, which can be used in performing measurements related to labor. None of the prior art teaches or suggests a method for monitoring the progress of labor that includes touching a position sensor to a fetal presenting part and a set of points on the mother and monitoring the position of the fetal presenting part with respect to at least one point from the set of points on the mother or calculating a relationship based on the sensed data, as set forth in the claims. Further, the prior art does not teach or suggest a position monitoring apparatus that includes a fetal key, a position sensor including a portion matching the shape of the fetal key, and a monitor for sensing the position of the position sensor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ali Imam can be reached on 571/272-4737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric F Winakur  
Primary Examiner  
Art Unit 3735

6 January 2006